

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

BRANDON CALLIER,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 3:22-cv-00123-FM
)	
WIDE MERCHANT INVESTMENT, INC.)	
a California corporation, and DAVID)	
BOEM JOON KIM,)	
)	
Defendants.)	

**AFFIDAVIT OF DAVID BOEM JOON KIM IN SUPPORT OF MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION OR IN THE ALTERNATIVE, FAILURE
TO STATE A CLAIM**

I, David Boem Joon Kim, declare:

1. I am the Chief Executive Officer of Defendant Wide Merchant Investment Inc. I have also been named as an individual defendant in this action. I have personal knowledge of the matters set forth in my declaration, and if called upon to do so could and would competently testify as to those matters.

2. I am a resident of the County of Los Angeles, State of California. I do not live in the State of Texas, nor do I own or lease any property in the State of Texas.

3. WMI is a private merchant cash advance company that offers small businesses operating capital by purchasing their invoices for an upfront cash advance and receiving a portion of future sales in return. WMI is a California Corporation, with its office and principal place of business in the County of Los Angeles, State of California.

4. While WMI offers merchant cash advances to small businesses throughout the United States, including businesses in the State of Texas, WMI does not have any offices or employees in the State of Texas.

5. WMI's merchant cash advance customers are typically repeat customers that have used WMI's merchant cash advance services in the past. Additionally, WMI does obtain referrals from independent sales organizations ("ISOs") that work with merchants seeking the type of merchant advance services that are offered from companies such as WMI. Those ISOs are independent brokers who will provide referrals to merchants seeking merchant advance services and other business financial products that may be offered by merchant cash advance companies, like WMI, and/or other companies that provide unrelated lending products, which WMI does not provide. Neither WMI, nor any of its affiliated or subsidiary entities, have ever contracted with any third party to make outbound sales calls on WMI's behalf.

6. WMI does not make any outbound sales calls to any consumers, including any consumers in the State of Texas.

7. WMI has never called Plaintiff Brandon Callier at the (915) 383-4604 telephone number at which Mr. Callier alleges he received calls in his Complaint, or any other telephone number.

8. I have never personally called Plaintiff Brandon Callier at the (915) 383-4604 telephone number at which Mr. Callier alleges he received calls in his Complaint, or any other telephone number. Moreover, I have never directed anyone to call Mr. Callier.

9. WMI has not at any time hired any third party to make any outbound sales calls on WMI's behalf, including any third party called Synergy Financial. WMI does not have any contractual relationship with Synergy Financial and certainly does not have any contract whereby Synergy Financial would have been authorized to make outbound sales calls on WMI's behalf.

10. I have never authorized anyone at Synergy Financial, or any other third party, to make any outbound sales calls to any individuals, including Mr. Callier. I have never directed or personally participated in any outbound sales calls to any individuals, including Mr. Callier.

11. At no point has anyone at WMI, including myself, authorized, asked, or engaged Synergy Financial to make any telephone calls for any purpose, including telephone calls on behalf of WMI.

12. At no point has anyone at WMI, including myself, instructed Synergy on when and which states to solicit via telephone calls or the minimum requirements to obtain a merchant cash advance through WMI.

13. At no point has anyone at WMI, including myself, had any direct communications with Aaron Cruz of Synergy Financial.


14. At no point has anyone at WMI, including myself, had any direct communications with Plaintiff Brandon Callier.

15. Prior to this lawsuit, WMI had no knowledge of any sort of calls made by Synergy Financial, including any calls purportedly made by Synergy on behalf of WMI. Prior to this lawsuit, WMI had never received any complaints or other information relating to telemarketing calls purportedly made by any third party, including Synergy Financial, on WMI's behalf.

16. Prior to this lawsuit, I personally had no knowledge of any sort of calls made by Synergy Financial, and certainly never heard of any allegations that Synergy Financial was making calls on behalf of WMI, which would not have been authorized by WMI.

I declare under penalty of perjury under the laws of the State of California and under the laws of the United States that the foregoing is true and correct.

Executed in Los Angeles, California, on July 25, 2022.



DAVID BOEM JOON KIM

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On 7/25/22 before me, Andres Abascal, Notary Public
(here insert name and title of the officer)

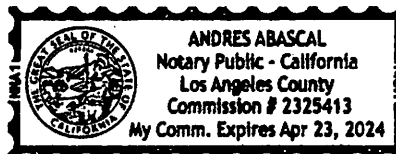
personally appeared David Boem Toon Kim

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]



OPTIONAL INFORMATION

Law does not require the information below. This information could be of great value to any person(s) relying on this document and could prevent fraudulent and/or the reattachment of this document to an unauthorized document(s)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: Affidavit of David Boem Toon Kim

Document Date: 7/25/22 Number of Pages: 4

Signer(s) if Different Than Above: _____

Other Information: _____

CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name(s):

☒ Individual

☐ Corporate Officer

(Title(s))

☐ Partner

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian/Conservator

☐ Other: _____

SIGNER IS REPRESENTING: Name of Person or Entity _____

